

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302
C.P.(IB)/279(AHM)2024

Proceedings under Section 9 IBC

IN THE MATTER OF:

KK Homes, through its Partner Anurag Dalmia
V/s
Eylex Films Pvt. Ltd

.....Applicant

.....Respondent

Order delivered on: 17/03/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB) No.279/9/AHM/2024

*(Petition under Section 9 of the Insolvency and Bankruptcy Code,
2016 read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016)*

IN THE MATTER OF:

M/s. K.K. Homes,
Registered office at:
Quality Mansion, Naya Para,
Sambalpur - 768001, Odisha

...Applicant/Operational Creditor

VERSUS

Eylex Films Private Limited
(CIN: U74900GJ2009PTC058406)
Registered office at:
Regus, Earth Arise,
Unit Nos. 1101-1106, 11th Floor,
Sarkhej-Gandhinagar Highway,
Makarba, Ahmedabad, Gujarat - 380015

...Respondent/Corporate Debtor

Order Pronounced On: 17.03.2025

CORAM:

Sh. Shammi Khan, Hon'ble Member (Judicial)
Sh. Sanjeev Kumar Sharma, Hon'ble Member (Technical)

APPEARANCE:

For the Applicant/OC : Tirath Nayak, Advocate.

For the Respondent/CD : Mr. Saumitra Chaturvedi, Advocate.

ORDER

1. The present Petition is filed on 27.08.2024 vide diary no. E2192 by the Applicant- **M/s. K.K. Homes** (hereinafter referred to as 'Operational Creditor') against the Respondent- **Eylex Films Private Limited** (hereinafter referred to as 'Corporate Debtor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "IB (AAA) Rules, 2016") for initiation of Corporate Insolvency Resolution Process (CIRP), to appoint an Interim Resolution Professional (hereinafter referred to as "IRP") and declare the moratorium for having defaulted in payment of the operational debt amounting to Rs.2,60,20,072.12ps., inclusive of interest of Rs. 49,05,849/-. The date of default is stated to be from 10.05.2021 and continues till date.

2. A perusal of Part-I of Form-5 reveals that the Operational Creditor is a partnership firm having its office at Quality Mansion, Naya Para, Sambalpur - 768001. The present Petition is filed through its Partner, Mr. Anurag Dalmia, who has been duly authorized by a resolution of the firm annexed as **Annexure-K**.
3. A perusal of Part-II of Form-5 reveals that the Corporate Debtor, Eylex Films Private Limited having CIN: U74900GJ2009PTC058406, is incorporated under the Companies Act, 2013, with its registered office at Regus, Earth Arise, Unit Nos. 1101-1106, 11th Floor, Sarkhej-Gandhinagar Highway, Makarba, Ahmedabad, Gujarat - 380015. A copy of the Corporate Debtor's Master Data from the MCA website dated 17.08.2024 is annexed as **Annexure-I**.
4. On perusal of Part-III of the Form-5 reveals that the Operational Creditor has not proposed the name of any Interim Professional under section 13 (1)(c) of the IB Code to act as Interim Resolution Professional (**IRP**).
5. A perusal of Part-IV of Form-5 reveals that the total operational debt as claimed by the Operational Creditor is Rs.

2,60,20,072.12, comprising: (i) Principal Amount: Rs. 2,11,14,223/- (ii) Interest Amount @18%: Rs. 49,05,849/- as interest up-to 18.06.2024.

6. The Operational Creditor has placed the facts through this Petition in the following manner: -

- (i) The Applicant, M/s. K.K. Homes, is a Partnership firm engaged in the business of real estate and leasing of commercial premises. The Corporate Debtor, Eylex Films Private Limited, is a company engaged in the business of film exhibition and multiplex operations.
- (ii) On 04.09.2014, the Applicant and the Corporate Debtor entered into a Lease Agreement, whereby the Corporate Debtor took on lease a 4-screen multiplex constructed and developed by the Applicant at City Centre Mall, Sambalpur, Odisha. The Corporate Debtor had agreed to occupy, operate and exhibit cinematographic films in the four-screen multiplex cinema which was constructed by the Operational Creditor. The copy of the said Agreement dated 04.09.2014 is annexed at **"Annexure-A"**
- (iii) As per the terms of the agreement, the Corporate Debtor was liable to pay:-

a. Monthly Lease Rent at an agreed rate.

b. Common Area Maintenance Charges as per usage.

c. Electricity Charges as per actual consumption.

- (iv)** The Corporate Debtor took possession of the leased premises and began commercial operations, continuing to occupy the premises and run multiplex operations.
- (v)** Despite regular operations and revenue generation, the Corporate Debtor defaulted in making lease payments, common area maintenance charges, and electricity charges which resulting in an accumulated outstanding amount.
- (vi)** The Applicant issued the first Demand Notice on 15.12.2023, claiming Rs. 4,78,56,814/-, which included lease dues, common area maintenance charges, and electricity charges along with interest. Upon issuance of the said Demand Notice, the Corporate Debtor has replied on 03.01.2024. Thereafter, the Applicant filed CP(IB) No. 103 of 2024 before this Hon'ble Tribunal, which was dismissed on 30.04.2024 on the ground that the lease agreement was unregistered. The copy of the order dated 30.04.2024 is annexed at **"Annexure-C"**.
- (vii)** Thereafter, the Applicant issued a fresh demand notice on 28.05.2024 in Form-3 and Form-4, demanding Rs. 2,60,20,072.12ps. from Corporate Debtor to pay as an amount of debt, followed by a corrigendum on 04.06.2024 which were delivered upon the Corporate Debtor. The copy of Demand Notice dated 28.05.2024 and Corrigendum cum Addendum dated 04.06.2024 is annexed at **"Annexure-D (Colly) and Annexure-E (Colly)"**.

- (viii) The Corporate Debtor Replied Vide Reply dated 18.06.2024. However, failed to clear its outstanding dues despite receiving the demand notices. The copy of Reply of Corporate Debtor dated 18.06.2024 is annexed at **“Annexure-F”**.
- (ix) Then on basis of the Demand Notice dated 28.05.2024, the Operational Creditor filed another Company Petition (IB) No. 243 of 2024 on 27.06.2024, which was eventually on withdrawn by the petitioner on 29.07.2024 by reserving liberty to file a fresh Form 5. The copy of order dated 29.07.2024 id annexed at **“Annexure-L (Colly)”**.
- (x) The Corporate Debtor continued to be in possession of the premises and derived commercial benefits without paying the lease dues, thereby unjustly enriching itself at the cost of the Applicant.
- (xi) The Applicant has relied on various invoices, demand notices, email communications, and bank statements to substantiate the claim that the Corporate Debtor has defaulted in payments.
- (xii) The Applicant contends that the outstanding amount qualifies as an operational debt under Section 5(21) of IBC, as it arises from services provided (i.e., use of the leased premises and associated charges). The date of default is taken as 10.05.2021 i.e. due date of the first invoice and thereafter, the default is continuing.

(xiii) The Operational Creditor has filed **Form-D** being record of debt and default issued by National E-Governance Services Limited ("**NeSL**") in which date of default is recorded as 10.05.2023 with status "**Deemed to be Authenticated**".

(xv). The present petition has been filed to initiate CIRP against the Corporate Debtor due to its continuing default and non-payment of legally enforceable dues.

7. The Operational Creditor has relied upon the following documents which are as under:-

1. Lease Agreement dated 04.09.2014.
2. Copy of Chart showcasing the summary and detailed computation of default in tabular format.
3. Invoices issued to the Corporate Debtor for lease rent, common area maintenance, and electricity charges.
4. Copy of Order dated 30.04.2024 passed in CP (IB) No. 103 of 2024 by this Hon'ble Tribunal.
5. Demand Notices dated 15.12.2023 and 28.05.2024 in Form - 3 and Form 4, along with corrigendum dated 04.06.2024 along-with proof of service
6. Copy of Reply of the Corporate Debtor dated 18.06.2024.
7. Copy of relevant GST data of the Operational Creditor.
8. Copy of record of default with the information utility in Form -D.
9. Email correspondences acknowledging the debt by the Corporate Debtor.
10. Bank statements showing non-receipt of payments.
11. Resolution of the Operational Creditor Authorising the Authorised Signatory

8. That on issuance of the notice in the Petition, the Corporate Debtor appeared and filed its reply denying various averments made in the Petition. The Corporate Debtor inter-alia contended that the present Petition U/s 9 of IBC, 2016 is not maintainable as the alleged debt claimed by the Operational Creditor does not fall within the purview of '**operational debt**'. Detailed Facts of the Respondent as per the Reply are as under: -

- (a). The Corporate Debtor, Eylex Films Private Limited, is a company engaged in the business of film exhibition and multiplex operations. It has been operating multiple cinema screens across various locations and has been facing financial and operational challenges due to external market conditions.
- (b). The Corporate Debtor contends that the Lease Agreement dated 04.09.2014 is unregistered, and as per Section 17 of the Registration Act, 1908, any lease exceeding 12 months must be compulsorily registered. Consequently, the agreement cannot be enforced in law, and any claim arising from it is not legally tenable.
- (c). The Corporate Debtor denies that the alleged dues constitute an operational debt under Section 5(21) of IBC, arguing that lease rentals do not fall within the definition of services or goods under the IBC framework.

- (d). The Respondent states that the Applicant wrongly issued demand notices despite being aware that the previous petition (CP(IB) No. 103 of 2024) was dismissed on similar grounds.
- (e). The Corporate Debtor asserts that there is a pre-existing dispute regarding the payments, and it had repeatedly communicated its objections regarding the lease charges, common area maintenance charges, and electricity charges. Various correspondences and objections were exchanged between the parties before the demand notices were issued.
- (f). The Corporate Debtor claims that several payments have already been made, and it has provided bank statements evidencing payments made towards lease rent and other charges.
- (g). The Corporate Debtor argues that the present petition is barred by res judicata, as the Applicant had earlier filed CP(IB) No. 103 of 2024, which was dismissed on 30.04.2024, and there has been no material change in facts or circumstances since that dismissal.
- (h). The Respondent contends that the Applicant has filed this petition with malafide intent to pressurize the Corporate Debtor into making payments that are disputed.
- (i). The Corporate Debtor relies on email communications and internal correspondences to show that disputes existed prior

to the demand notices, thereby making the petition not maintainable under Section 9(5)(ii)(d) of IBC.

(j). The Corporate Debtor also highlights that the demand notice issued on 28.05.2024 was unauthorized, as the individual issuing the notice did not have proper authorization from the firm.

(k). The Respondent contends that the Tribunal must exercise caution in admitting insolvency petitions where there is a clear pre-existing dispute, citing the Supreme Court judgment in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***

(l). Based on the above facts, the Corporate Debtor prays for the dismissal of the petition as not maintainable under IBC.

9. The Corporate Debtor has relied upon the following documents which are as under:-

1. Reply to the demand notice denying liability.
2. Board resolutions and internal correspondence regarding the lease agreement.
3. Previous Tribunal order dismissing CP(IB) No. 103 of 2024.
4. Bank statements showing payments made to the Applicant.
5. Email correspondences disputing the claimed amount.

10. The Applicant filed the Rejoinder to the Reply of the Respondent with following Rebuttal: -

- (i) The Applicant denies the Corporate Debtor's contention that the Lease Agreement dated 04.09.2014 is unenforceable, arguing that the Corporate Debtor acted upon the agreement, occupied the premises, and made payments under it for several years.
- (ii) The Applicant contends that despite the lease agreement being unregistered, the invoices, payment receipts, and email correspondences independently establish an operational debt.
- (iii) The Applicant argues that the Respondent has never disputed the amount payable before the issuance of the demand notice, and therefore, the claim of a pre-existing dispute is false and an afterthought.
- (iv) The Applicant states that the Respondent continued to use the multiplex facilities and derive financial benefits while intentionally defaulting on payments, showing mala fide intent.
- (v) The Applicant counters the Corporate Debtor's argument that the demand notice was unauthorized, stating that the notices were issued in the correct Form-3 and Form-4 under IBC, along with supporting invoices, thereby fulfilling legal requirements.
- (vi) The Applicant refutes the Corporate Debtor's reliance on res judicata, arguing that the previous petition was

dismissed on a technicality and not on merits, making the present petition fully maintainable.

- (vii) The Applicant asserts that the Corporate Debtor's claim of payments made is misleading, as only partial payments were made, leaving a significant outstanding balance.
- (viii) The Applicant highlights that in multiple emails, the Corporate Debtor acknowledged the dues but later attempted to create disputes to evade payment.
- (ix) The Applicant argues that the Corporate Debtor's objections regarding common area maintenance and electricity charges were never formally raised before the demand notices were issued, further proving the absence of a pre-existing dispute.

11. The Applicant also filed written submissions. Detailed Facts of the Applicant as per the written submissions are as under: -

1. The Applicant reiterates that the Corporate Debtor has continuously defaulted in making payments despite multiple reminders and legal notices.
2. The lease agreement was acted upon, and the Corporate Debtor acknowledged the dues in multiple email correspondences.
3. The Applicant emphasizes that the demand notices were issued in compliance with the IBC framework and were duly served upon the Corporate Debtor.

4. The Applicant provides additional bank statements, payment records, and financial documents to substantiate that the Corporate Debtor has an outstanding liability.
5. The Applicant counters the pre-existing dispute argument, stating that the Respondent's claims of disputes were raised only after the demand notices were issued, proving that they are not genuine disputes but rather an attempt to evade liability.
6. The Applicant highlights that multiple judicial precedents have confirmed that unpaid lease dues qualify as operational debt if they are tied to continued business operations.
7. The Applicant further contends that the Corporate Debtor's financial viability does not exempt it from liability, and failure to pay operational creditors warrants initiation of CIRP.
8. The Applicant refutes the res judicata claim, arguing that the previous dismissal was not on merits but on technical grounds, making this petition fully maintainable.
9. The Applicant prays for admission of the petition and initiation of CIRP against the Corporate Debtor.

12. The Respondent also filed written submissions. Detailed Facts of the Respondent as per the written submissions are as under: -

1. The Respondent reiterates that the Lease Agreement dated 04.09.2014 is unregistered and, therefore, unenforceable under the Registration Act, 1908.
2. The Corporate Debtor maintains that the dues do not qualify as operational debt under Section 5(21) of IBC, as lease rentals do not constitute goods or services.
3. The Respondent argues that there exists a genuine pre-existing dispute, evidenced by multiple communications objecting to charges levied by the Applicant.

4. The Corporate Debtor asserts that several payments have already been made, and the Applicant is inflating claims to misuse the insolvency framework.
5. The Respondent provides board resolutions and email correspondences to support its claim that the demand notices were issued without proper authorization.
6. The Corporate Debtor submits that the present petition is barred by constructive res judicata, as the Applicant had previously filed CP(IB) No. 103 of 2024, which was dismissed.
7. The Respondent cites various Supreme Court and NCLAT judgments to argue that lease disputes should be adjudicated in civil courts and not under IBC.
8. The Corporate Debtor prays for dismissal of the petition on the grounds that it is not maintainable under IBC and that the Applicant has an alternate remedy in civil law

13. The Applicant has relied upon the following Judgments and Citations in its favour:-

- ***Mobilox Innovations Private Limited VS. Kirusa Software Private Limited: 2018(1) SCC 353.***
- ***Kay Bouvet Engineering Limited VS. Overseas Infrastructure Alliance (India) Private Limited: 2021(10) SCC 483.***
- ***Macquarie Bank Limited VS. Shilpi Cable Technologies Limited: 2018(2) SCC 674.***
- ***Consolidated Construction Consortium Limited VS. Hitro Energy Solutions Private Limited: 2022(7) SCC 164.***
- ***DBM Geotechnics and Construction Private Limited VS. Hi-Tech Elastomers Limited: Special Civil Application No. 12425 of 2019.***

- ***Bijender Chauhan VS. Financial Eyes (India) Limited:*** ILR(2013) 4 Del 3234.
- ***Nandamuri Meenalatha VS. Quality Steels and Wire Products & Anr.:*** 2023 SCC Online NCLAT 1757.
- ***Next Education India Private Limited VS. K12 Techno Services Private Limited:*** 2023 SCC Online 1117.
- ***Mathura Prasad Bajoo Jaiswal and Ors. VS. Dossibai N.B. Jeejeebhoy:*** 1970(1) SCC 613.

14. The Respondent has relied upon the following Judgments and Citations in its favour:-

- ***Ramchandra Dagdu Sonavane (Dead) By Lrs. & Ors. Vs Vithu Hira Mahar (Dead) By Lrs. & Ors.:*** (2009) 10 SCC 273.
- ***Sunderabai & Anr. Vs Jivaji Devarao Deshpande:*** (1952) 2 SCC 92.
- ***Mohanlal Goenka Vs Benoy Kishna Mukherjee & Ors.:*** (1952) 2 SCC 648.
- ***Vikas Dahiya Vs Arrow Engineering & Anr.:*** Company Appeal (AT) (INS) No. 699 & 812 of 2022.
- ***Saroj Vs. Chinnusamy (Dead) & Anr.:*** (2007) 8 Supreme Court Cases 329.

15. We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor, Ld. Counsel for the Respondent/Corporate Debtor and perused the material available

on record produced before this Tribunal as well as the judgments relied upon therein by the both sides in support of their submissions.

16. The following Issues are involved for Determination: -

1. Whether an unregistered lease agreement can be the basis for a claim under IBC?
2. Whether a legally enforceable operational debt exists?
3. Whether the second demand notice and corrigendum were validly issued?
4. Whether a pre-existing dispute prevents CIRP initiation?
5. Whether the principle of constructive res judicata bars the present petition?

17. Legal Analysis and Findings on Issue No.1 are as under:-

- (i). The Corporate Debtor argues that the lease agreement being unregistered makes it unenforceable.
- (ii). Where as the applicant has also attached the invoices for a period of 01.05.2021 to 01.05.2024 and the total balance outstanding in relation to the said invoices, from the Corporate Debtor as on 15.05.2024 is **Rs.2,60,20,072.00/-** including the interest and excluding the amount which is already been received from the Corporate Debtor for the said period. The chart of invoices and the copy of invoices are attached at “**Annexure-B (Colly)**” to the petition.

- (iii). The Applicant counters that the claim is based on invoices and financial transactions, not solely on the lease agreement.
- (iv). For substantiating this issue this Tribunal has placed reliance on on the judgement of Hon'ble Supreme Court in the matter of **Consolidated Construction Consortium Limited VS. Hitro Energy Solutions Private Limited (2022(7) SCC 164)**. The relevant portion of the said judgement is hereby reproduced:

“50.2. Second, Section 8(1) IBC read with Rule 5(1) and Form 3 of the 2016 Application Rules makes it abundantly clear that an operational creditor can issue a notice in relation to an operational debt either through a demand notice or an invoice. As such, the presence of an invoice (for having supplied goods or services) is not a sine qua non, since a demand notice can also be issued on the basis of other documents which prove the existence of the debt. This is made even more clear by Regulations 7(2)(b)(i) and (ii) of the 2016 CIRP Regulations which provide an operational creditor, seeking to claim an operational debt in a CIRP, an option between relying on a contract for the supply of goods and services with the corporate debtor or an invoice demanding payment for the goods and services supplied to the corporate debtor. While the latter indicates that the operational creditor should have supplied goods or services to the corporate debtor, the former is broad enough to

include all forms of contracts for the supply of goods and services between the operational creditor and corporate debtor, including ones where the operational creditor may have been the receiver of goods or services from the corporate debtor.”

- (v). In view of above, the claim is not barred solely due to an unregistered lease agreement. As per an operational debt can exist if invoices and other records substantiate the claim.

17. Legal Analysis and Findings on Issue No.2 are as under: -

- (i). The Respondent argues that lease rentals do not constitute operational debt.
- (ii). The Applicant contends that continued usage of premises for business operations, along with invoices and charges, brings the debt within the scope of Section 5(21) of IBC.
- (iii). In view of above, the Tribunal finds merit in the Applicant's argument. As per various judicial precedents the operational debt is already recognized beyond traditional supply of goods/services.

18. Legal Analysis and Findings on Issue No.3 are as under:-

- (i) The Tribunal determines that the Applicant has demonstrated an operational debt exceeding Rs.1.00 crore, satisfying Section 4 of IBC.

- (ii) The Demand Notices 28.05.2024 in Form - 3 and Form 4 along-with Invoices and Corrigendum dated 04.06.2024 were duly served by the Applicant through its one of the partners and payments remain outstanding.
- (iii) The plea of the Respondent that it was served without any authorization through advocate is not sustainable. As it was issued on the instructions of one of the partners of the Applicant. The question as to the notice under Section 8 signed by the Advocate-on-record is duly answered by Hon'ble Supreme Court in the matter of ***Macquire Bank Limited Vs. Shilpi Cable Technologies Limited (2018(2) SCC 674)***. The relevant portion of the said judgement is hereby reproduced: -

"49. Since there is no clear disharmony between the two parliamentary statutes in the present case which cannot be resolved by harmonious interpretation, it is clear that both statutes must be read together. Also, we must not forget that Section 30 of the Advocates Act deals with the fundamental right under Article 19(1)(g) of the Constitution to practise one's profession. Therefore, a conjoint reading of Section 30 of the Advocates Act and Sections 8 and 9 of the 2016 Code together with the Adjudicatory Authority Rules and Forms thereunder would yield the result that a notice sent on behalf of an operational creditor by a lawyer would be in order.

51. The expression "an operational creditor may on the occurrence of a default deliver a demand notice under Section 8 of the 2016 Code must be read as including an operational creditor's authorised agent

and lawyer, as has been fleshed out in Forms 3 and 5 appended to the Adjudicatory Authority Rules.”

- (iv) Therefore, the Demand Notice comply with statutory requirements.

19. Legal Analysis and Findings on Issue No.4 - Pre-existing Dispute are as under:-

- (i) That, the Respondent has taken a plea that there exists a pre-existing dispute between the parties qua prior communications objecting to rental calculations and maintenance charges.
- (ii) However, the Respondent has not placed on record any record that is sufficient to convince this Tribunal about the pre-existing dispute between the parties.
- (iii) The Applicant argues that these disputes were never formally raised before demand notices were issued.
- (iv) Rather, the applicant has placed on record the e-mail conversation between the parties at **“Annexure-A”** of the rejoinder in which there is no communication by the respondent which establishes the presence of any pre-existing dispute between the parties
- (v) In view of above, the Tribunal finds that objections raised after demand notices do not qualify as bona fide disputes. As per ***Mobilox Innovations Pvt. Ltd. Vs.***

Kirusa Software Pvt. Ltd. (2018(1) SCC 353), a dispute must exist before demand notice issuance.

- (vi) Hence, in view of above, no evidence of pre-existing dispute exists prior to issuance of Demand Notice that would bar insolvency proceedings.

20. Legal Analysis and Findings on Issue No.5 of Res Judicata are as under:-

- (i) The Corporate Debtor claims that the dismissal of CP(IB) No. 103 of 2024 precludes this petition.
- (ii) The Applicant argues that the previous case was dismissed on technical grounds and not on merits.
- (iii) This Tribunal has placed reliance on the judgement of Hon'ble Supreme Court in the matter of ***Mathura Prasad Bajoo Jaiswal and Ors. Vs. Dossibai N.B. Jeejeebhoy (1970(1) SCC 613)***. The relevant portion of the said judgement is hereby reproduced:-

“5.A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties...”

11. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened.....”

(iv) Hence, in the present case Res-judicata does not apply.

21. Hence, the Tribunal finds that the Applicant has established a valid operational debt. The petition is maintainable as the claim constitutes an operational debt under IBC. The Corporate Debtor has defaulted and has not provided sufficient evidence of a pre-existing dispute to bar the petition. The doctrine of res judicata does not apply, and the claim is maintainable under IBC. Further, the Demand Notice comply with statutory requirements.

22. Therefore, the present Petition is complete in terms of Section 9 of the Code. The Operational Creditor is entitled to claim its dues, establishing the operational debt and default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present Petition. Moreover, the aforesaid said default is not covered under the period exempted under Section 10A of IBC, 2016. Accordingly, the Petition filed under section 9 of the

Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

23. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under: -

- (i) The Respondent/Corporate Debtor **Eylex Films Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence, thereof, an Interim Resolution Professional (**IRP**) is appointed, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.
 - a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

- d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since, the Operational Creditor has not proposed name of any Interim Resolution Professional (IRP) in Part-III of Form-5. Therefore, we appoint from the panel of Insolvency Professional (IP) as recommended by IBBI through its letter dated 31.12.2024 bearing file no. IP-12011/1/2020-IBBI/1370/1096, **Mr. Keshav Khaneja** having Registration No. **IBBI/IPA-002/IP-N01131/2021-2022/13759** (e-mail: **khanejakes@gmail.com**) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).

He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate

Debtor company as a going concern as a part of obligation imposed by section 20 of the Code.

- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Petition and shall forward the compliance report to the Registrar, NCLT.
- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

24. Accordingly, this Petition being **CP(IB)/279/9/AHM/2024** is admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)
Rishabh LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)